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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/502,053

07/30/2004

Jun Fujimoto

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7590

09/16/2008

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

MOSSER, ROBERT E

ART UNIT

PAPER NUMBER

3714

NOTIFICATION DATE

DELIVERY MODE

09/16/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/502,053	<b>Applicant(s)</b> FUJIMOTO ET AL.	
	<b>Examiner</b> ROBERT MOSSER	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5,8-10,12,14-23,26-28,30 and 32-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,8-10,12,14-23,26-28,30 and 32-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 23<sup>rd</sup>, 2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **1-5, 8-10, 12, 14-23, 26-28, 30, and 32-41** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa (US 6,019,369) in view of Koza et al (US 5,069,453).

Claims **1-5, 8, 12, 14-15, 19-23, 26, 30, and 32-38, 41:** Nakagawa teaches a hardware and software device for providing a multi-player (mass) simulated horse racing competition including:

- a time management unit configured to advance an entry time in which a plurality of users/players can enter the game (*Nakagawa* Col 4:60-65);

- a decision unit configured to determine the game result through the finish order of the race horses (*Nakagawa* Col 10:55-67);

- a forecast information obtaining unit adapted to capture respective user/player forecasts of the game outcome prior the elapse of the entry time (*Nakagawa* Col 4:29-60);

- a determination unit configured to determine whether the game result and the respective player selection match (*Nakagawa* Col 4:65-67);

- a random number generator in communication with an advancement/ effect decision means unit for advancing the display of the racing game effect contents and length of said effect contents according to the determined game result after the closure of an entry time and with the passing of a start time (*Nakagawa* Col 10:55-67);

and

a calculation unit configured to calculate a user/player payout amount based on a match between the game result and the player selection prior to the elapse of the entry time (*Nakagawa* Col 4:65-67).

The teachings of Nakagawa however do not explicitly present that the determination of the race outcome may be determined prior to the closure of wager acceptance however with relation to this feature Koza teaches that it is known to vary the determination of a game results prior to, during, and after the placement of a wager (*Koza* Col 1:26-29, 5:42-47, 20:44-52). It would have been obvious to one of ordinary skill in the art of gaming to determine the results of the horse racing game of Nakagawa as taught by Koza because the determination of the game outcome allows for the determination of financial liability prior to the closure of the wagering period.

The combination of Nakagawa and Koza, however is arguably silent regarding the inclusion of,

a game controller adapted to control a game execution between a game controller and a terminal reflective instructions received from the terminal.

In a related wagering device Walker teaches the inclusion of a remote terminal server system to provide a game controller adapted to control a game execution between a game controller and a terminal reflective software instructions exchanged between the terminal and server (*Walker* Figure 3 & Elm 4, 10). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporate the server terminal structure as taught by Walker into the of combination of Nakagawa and

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Koza order to enable group player between a plurality of player across geographically disperse locations.

Claims **9-10**, and **27-28**: Nakagawa further teaches the ability of the game device to alter the effect contents of the game based on the number of players operating a common instance of the game through altering the game payout determination (Nakagawa Col 4:51-5:4).

Claims **16-17**: Nakagawa teaches the features of a notification unit for notifying the user terminal of the game results through the presentation of the race to the player after the start time.

Claims **18, 36**, and **40**: The combination of Nakagawa and Koza teach player identification however is arguably silent regarding the inclusion of player authentication. The invention of Walker however teaches the incorporation of player authentication (*Walker* Col 8:49-9:7). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the authentication features Walker into the invention of Nakagawa and Koza in order to prohibit unauthorized use of the gaming device.

Claim **39**: Nakagawa teaches presenting a horse race with a fixed number of horses and determining the game outcome based on the finishing order of those horses thereby presenting a result selected from a fixed plurality of possible results.

### ***Response to Arguments***

Applicant's arguments filed June 23<sup>rd</sup> 2008 have been fully considered but they are not persuasive in view of the newly applied prior art. Applicant's arguments directed to Wilson primarily address Wilson's disavowal of computer logic to determine a race outcome and the order of the determination of game outcome and closure of wager acceptance of the prior art. To better address these features as amended the rejections of art now incorporate the prior art references of *Nakagawa* and *Koza* while retaining their reliance on the Walker reference. These features have been correlated above and will not be recited herein for the sake of brevity.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT MOSSER whose telephone number is (571)272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert E Pezzuto/  
Supervisory Patent Examiner, Art Unit 3714

/R. M./  
Examiner, Art Unit 3714